AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Intergovernmental Agreement; Nurse Home Visitor Pr

Action Requested:

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

This is our ongoing NFP contact with Montrose County. This was initially routed for the 6/4 meeting that has since been cancelled. Requesting approval during 5/28 Special Meeting to get this expedited.

Fiscal Impact:

Submitted by: Liz Mense for Joni Reynolds **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, included in 2019 adopted budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/22/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 5/24/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 5/24/2019 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/24/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 5/28/2019

Revised April 2015

MONTROSE COUNTY
HEALTH & HUMAN SERVICES
1845 South Townsend Ave.
Montrose, CO 81401
Phone: 970-252-5000
www.montrosecounty.net

May 15, 2019

Joni Reynolds, Director
Gunnison County Health Department
225 N. Pine Street, Suite E
Gunnison, CO 80230

Joni,

I have enclosed two (2) originals of the Nurse Home Visitor Program Intergovernmental Agreement between you and Montrose County Health and Human Services.
Please sign both originals. Once you have received the necessary signatures, please send both originals to me. Once they have been signed by the Montrose Board of County Commissioners, I will send a fully executed copy to you.

Thank you! ☺

Sincerely,

Teri Watkins

Administrative Support Manager
Emergency Preparedness and Response Coordinator
Montrose County Health and Human Services
970-252-5058
tgwatkins@montrosecounty.net

INTERGOVERNMENTAL AGREEMENT
RE: NURSE HOME VISITOR PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT shall become effective the 1st day of July, 2019 between the County of Montrose, by and through its Board of County Commissioners ("Montrose"), a body politic and corporate, duly organized and existing within the State, whose address is 317 South Second Street, Montrose, CO 81401, and the County of Gunnison, by and through its Board of County Commissioners ("Gunnison"), a body politic and corporate, duly organized and existing within the State of Colorado, whose address is 200 E. Virginia, Gunnison, CO 81230.

RECITALS

WHEREAS, Montrose has entered into a Contract dated July 1, 2014 with the State of Colorado regarding the implementation of the Nurse Home Visitor Program ("NHVP") for several area counties, including Gunnison County. A copy of Contract #20 IHIA 129469 is attached as Exhibit A. Together, these agreements are collectively referred to herein as "State Task Order".

WHEREAS, such State Task Order allocates monies for provision of NHVP services in Gunnison County, and

WHEREAS, Montrose desires to enter into this subcontract for the provision of NHVP services in Gunnison County, and Gunnison desires to provide such services on behalf of Montrose, and in compliance with the State Task Order, and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Montrose and Gunnison enter into this Intergovernmental Agreement as follows:

SECTION I.
DESCRIPTION OF WORK

The purpose of the NHVP is to provide trained visiting nurses to help educate mothers on the importance of nutrition and avoiding alcohol and drugs, including nicotine, and to assist and educate mothers in providing general care for their children.

Gunnison shall provide NHVP services within Gunnison County, and so long as this Agreement is in effect, Montrose shall have no duty to provide NHVP services in Gunnison County. In providing such services, Gunnison shall comply with all requirements of the State Task Order (see attached Exhibits A and B), and with all Federal, State and Municipal laws, rules, and regulations that are now, or may in the future, become applicable to the work performed under this Agreement and the State Task Order.

LPT

SECTION II.
PAYMENTS

In consideration of Gunnison's provision of NHVP services in Gunnison County, Montrose shall make monthly payments to Gunnison upon receipt of invoices evidencing the work completed. Such payments may not exceed $77,405.00, which is the total amount allocated in Fiscal Year 2019-2020 for services in Gunnison County. It is specifically understood and agreed that Montrose's obligation to pay Gunnison under this agreement is dependent upon, and limited to, the receipt of monies from the State for funding the NHVP in accordance with the State Task Order. Montrose shall not be obligated to pay Gunnison out of Montrose County's separate funds, or from any other source of funds outside the State funding for the NHVP

SECTION III.
RELATIONSHIP OF PARTIES

This Agreement is intended to create an Independent Contracting relationship. Gunnison shall be responsible for hiring or retaining, and compensating, all staff necessary to provide the services contemplated under this Agreement. Neither Gunnison, nor any agent or employee of Gunnison, shall be deemed to be an agent or employee of Montrose. Gunnison shall remain responsible for payment of any and all required employment taxes, income taxes, or other applicable taxes, on any monies paid by Gunnison for provision of services under this Agreement. Gunnison acknowledges that Gunnison and its employees are not entitled to unemployment insurance benefits unless Gunnison, or a third party, provides such coverage, and that Montrose does not pay for, or otherwise provide, such coverage.

Gunnison shall have no authorization, express or implied, to bind Montrose to any agreements, liability, or understanding, except as expressly set forth herein.

SECTION IV.
INSURANCE, LICENSING, LIABILITY

Gunnison shall provide and keep in force worker's compensation and unemployment compensation insurance in amounts required by law. Gunnison shall maintain general liability insurance with minimum limits of $600,000 per claim and $1,000,000 aggregate per occurrence. Gunnison acknowledges that it shall be solely responsible for the acts of Gunnison, and its employees and agents.

With respect to the individual Nurse(s) utilized by Gunnison to provide services under this Agreement, and any other professional hired or retained to provide such services, Gunnison shall ensure that the individual's professional license is valid and current, and that professional malpractice liability insurance is in force to cover the acts and omissions of the professional during the term of this Agreement.

Proof of required insurance coverages shall be provided to Montrose upon request.

SECTION V.
DURATION

The term of this Intergovernmental Agreement shall commence on the 1st of July, 2019 and shall continue through June 30, 2020. The term of this Intergovernmental Agreement, may not exceed one year.

It is understood that this Intergovernmental Agreement may be terminated by either party, without cause, upon thirty (30) days written notice to the other party.

SECTION VI.
SUPERVISION

In the provision of services under this Agreement, Gunnison is an independent contractor with authority to control and direct the performance of the details of the work, Montrose being interested only in the results obtained. However, Montrose shall have the right to monitor and evaluate the performance of Gunnison to ensure that the terms of this Agreement, and the requirements of the State Task Order, are being satisfactorily met.

SECTION VII.
GENERAL PROVISIONS

1. The parties stipulate and agree that the rights and duties contemplated under this Intergovernmental Agreement shall not be assigned, delegated, or otherwise transferred to a third party without the prior written consent and agreement of the parties.

2. Each and every clause and covenant of this Agreement shall extend to, benefit, and bind the successors and assigns of the parties hereto respectively.

3. Any and all modifications, alterations, additions, and/or changes to any term, condition, or agreement contained herein, shall be void and not binding on either party unless set forth in writing and signed by both parties.

4. This Agreement, attached exhibits, and any written amendments attached, represent the full understanding between the parties.

5. Nothing in this Agreement shall be construed as a waiver of the governmental immunity available to both parties under Colorado statute or other laws.

6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the respective parties have set their signatures effective the day and year first above written.

MONTROSE COUNTY HEALTH AND HUMAN SERVICES

_____

Stephen C. Tullos, Director

DATE: _____

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS

_____

Chairman

DATE: _____

Blue Ink

SIGN HERE

MONTROSE BOARD OF COUNTY COMMISSIONERS

_____

Sue Hansen, Chair

DATE: _____

ATTEST:

_____

Deputy Clerk to the Board

Date: _____

EXHIBIT A

COLORADO
Department of Human Services

20 IHIA 129469
eClearance:

STATE OF COLORADO
DEPARTMENT OF HUMAN SERVICES CONTRACT

SIGNATURE AND COVER PAGES

State Agency Colorado Department of Human Services Office of Early Childhood Division of Community and Family Support	**Contractor** Montrose County Department of Health and Human Services Contractor's State of Incorporation: Colorado
Contract Maximum Amount Initial Term State Fiscal Year 2020 $625,749* Extension Terms N/A *An appropriation for NHVP General Accounting Encumbrance (GAE) is hereby added to this contract. The maximum payable for GAE is subject to appropriated funds, not to exceed $50,000 which is split among other NHVP vendors. See Exhibit C: Additional Provisions. Maximum Amount for All Fiscal Years $625,749*	**Contract Performance Beginning Date** The later of the Effective Date or July 1, 2019 **Initial Contract Expiration Date** June 30, 2020 Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 Years from its Performance Beginning Date.
Pricing/Funding Price Structure: Cost Reimbursement Contractor shall invoice: Monthly Fund Source: State General Fund	**Options** The State shall have the following options if indicated with "Yes," as further described in §2.C and §5.B.v: Option to Extend Term per §2.C: Yes Option to Increase or Decrease Maximum Amount per §5.B.v: Yes
Insurance Contractor shall maintain the following insurance if indicated with "Yes," as further described in **§12**: Worker's Compensation: Yes General Liability: Yes Automobile Liability: **Yes** Protected Information: **Yes** Professional Liability Insurance: **No** Crime Insurance: **No**	**Miscellaneous** Authority to enter into this Contract exists in: C.R.S. 26-6.4-107. Law-Specified Vendor Statute (if any): C.R.S. 26-6.4-107 Procurement Method: Law Specified Solicitation Number (if any): N/A
State Representative Julie Becker, Home Visiting Program Director Colorado Department of Human Services, Office of Early Childhood, Division of Community and Family Support 1575 Sherman Street, 1st Floor Denver, CO 80203 Phone - 303-866-5205; Email - julie.becker@state.co.us	**Contractor Representative** Theresa Balet 1845 South Townsend Avenue Montrose, CO 81401 Phone - 970-252-5015 Email - tbalet@montrosecounty.net

Exhibits

The following Exhibits are attached and incorporated into this Contract:
Exhibit A - Statement of Work
Exhibit B - Budget
Exhibit C - Additional Provisions
Exhibit D - HIPAA Business Associate Addendum
Exhibit E - Critical Incident Reporting

Contract Purpose

In accordance with the provisions of this contract and its exhibits and attachments, the Contractor shall: Provide trained visiting nurses to help educate mothers on the importance of nutrition and avoiding alcohol and drugs, including nicotine, and to assist and educate mothers in providing general care for their children.

Signature Page begins on next page →

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

CONTRACTOR Montrose County Department of Health and Human Services _____ By: Sue Hansen, Chair, Board of County Commissioners Date: _____	**STATE OF COLORADO** Jared Polis, Governor Department of Human Services Michelle Barnes, Executive Director _____ By: Mary Anne Snyder, Director, Office of Early Childhood Date: _____
2nd State or Contractor Signature if Needed _____ By: Date: _____	**LEGAL REVIEW** Phil Weiser, Attorney General By:_____ Assistant Attorney General Date: _____

In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Clint Woodruff / Andrea Eurich / Travis Yoder

Effective Date:_____

-- Signature and Cover Pages End --

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1. PARTIES

This Contract is entered into by and between Contractor named on the Signature and Cover Pages for this Contract (the "Contractor"), and the STATE OF COLORADO acting by and through the Department of Human Services (the "State" or "CDHS"). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

B. Initial Term

The Parties' respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Signature and Cover Pages for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover Pages for this Contract (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Extension Terms - State's Option

If the Signature and Cover Pages for this Contract shows that the State has the Option to Extend Term, then the State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, at the same rates and under the same terms specified in the Contract (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to **§21** "Sample Option Letter." The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date, or the number of years specified on the Signature and Cover Pages if such number is less than 5 years, absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§15,** may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§15.** The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a**.

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made.

Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**Breach of Contract**" means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.

B. "**Business Day**" means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1) C.R.S.

C. "**Chief Procurement Officer**" means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.

D. "**CJI**" means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under 24-72-302 C.R.S.

E. "**Contract**" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto. For purposes of clarification and the removal of any doubt, subject to any future modifications thereto, the Signature and Cover Pages and Sections 1 through 21, as identified in the Table of Contents herein above, shall constitute the "main body" of this Contract exclusively.

F. "**Contract Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.

G. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

H. **"End of Term Extension"** means the time period defined in **§2.D**.

I. **"Effective Date"** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State's Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature and Cover Page for this Contract.

J. "**Exhibits**" means the exhibits and attachments included with this Contract as shown on the Signature and Cover Pages for this Contract..

K. **"Extension Term"** means the time period defined in **§2.C.**

L. "**Goods**" means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.

M. **"Incident"** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.,* C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

N. **"Initial Term"** means the time period defined in **§2.B**.

O. "**Party**" means the State or Contractor, and "Parties" means both the State and Contractor.

P. "**PCI**" means payment card information including any data related to credit card holders' names, credit card numbers, or the other credit card information as may be protected by state or federal law.

Q. "**PII**" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.

R. "**PHI**" means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

S. "**Services**" means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.

T. **"State Confidential Information"** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

U. **"State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

V. **"State Fiscal Year"** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

W. **"State Records"** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

X. "**Subcontractor**" means third-parties, if any, engaged by Contractor to aid in performance of the Work.

Y. "**Tax Information**" means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

Z. "**Work**" means the Goods delivered and Services performed pursuant to this Contract.

AA. "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of the Exhibits. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

5. PAYMENTS TO CONTRACTOR

A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that term shown on the Signature and Cover Pages for this Contract.

B. Payment Procedures

i. Invoices and Payment

a. The State shall pay Contractor in the amounts and in accordance with the Exhibits.

b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on

delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in **§2.E.**

v. Option to Increase Maximum Amount

If the Signature and Cover Pages for this Contract show that the State has the Option to Increase or Decrease Maximum Amount, then the State, at its discretion, shall have the option to increase or decrease the statewide quantity of Goods and Services based upon the rates established in this Contract, and increase the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to **§21** "Sample Option Letter." Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to **§17** or pursuant to any other Exhibit, for any contract having a term longer than 3 months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and

standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State at the time or times specified by the State in this Contract, or, if no time is specified in this Contract, not later than 5 Business Days following the end of each calendar quarter.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 5 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Signature and Cover Pages as provided in **§15**.

C. Performance Outside the State of Colorado or the United States, §24-102-206 C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with **§15** and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 3 years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and

monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State, at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written

approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

D. Contractor shall maintain a written conflict of interest policy. Contractor shall provide the written conflict of interest policy to the State upon request.

10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract to the extent that such insurance policies are required as shown on the Signature and Cover Page for this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

i. $1,000,000 each occurrence;

ii. $1,000,000 general aggregate;

iii. $1,000,000 products and completed operations aggregate; and

iv. $50,000 any 1 fire.

B. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

C. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $2,000,000 general aggregate.

iii. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 10 or fewer individuals or revenues of $250,000 or less, Contractor shall maintain limits of not less than $50,000.

iv. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 25 or fewer individuals or revenues of $500,000 or less, Contractor shall maintain limits of not less than $100,000.

D. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

E. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

F. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

G. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

H. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§15** within 7 days of Contractor's receipt of such notice.

I. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

J. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

K. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§12** for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in the

Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in **§11,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary

to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State, **(i)** secure that right to use such Work for the State and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in **§11** and the dispute resolution process in **§13**, shall have all remedies available at law and equity.

13. STATE'S RIGHT OF REMOVAL

The State retains the right to demand, at any time, regardless of whether Contractor is in breach, the immediate removal of any of Contractor's employees, agents, or subcontractors from the work whom the State, in its sole discretion, deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the state to be contrary to the public interest or the State's best interest.

14. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in **§14.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDHS as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109 and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

15. NOTICES AND REPRESENTATIVES

Each individual identified on the Signature and Cover Pages shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth on the Signature and Cover Pages for this Contract or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Signature and Cover Pages for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is $100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

18. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract

B. Subcontracts

Unless other restrictions are required elsewhere in this Contract, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any Work after that Subcontractor's subcontract has been rejected by the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **§18.A.**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

K. Order of Precedence

In the event of a conflict or inconsistency between this Contract and any Exhibits or attachments such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

i. HIPAA Business Associate Agreement (if any).

ii. Colorado Special Provisions in **§19** of the main body of this Contract.

iii. The provisions of the other sections of the main body of this Contract.

iv. Any other Exhibit(s) shall take precedence in alphabetical order.

L. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

M. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

N. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

O. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.* C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

P. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§18.A.,** this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

Q. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

R. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

S. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

T. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term

of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

U. Indemnification

i. Applicability

This entire **§18.U** does not apply to Contractor if Contractor is a "public entity" within the meaning of the GIA.

ii. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

iii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of **§8** may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

iv. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental

Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the

term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[***Not applicable to intergovernmental agreements***] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and CDHS within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a

Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to CDHS a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101 *et seq.*, C.R.S., CDHSmay terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101 *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

20. DEPARTMENT OF HUMAN SERVICES PROVISIONS

A. Exclusion, Debarment and/or Suspension

Contractor represents and warrants that Contractor, its employees, agents, assigns, or Subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program by any federal or State of Colorado department or agency. If Contractor, its employees, agents, assigns, or Subcontractors, are excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of this Contract, Contractor shall notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Contractor, the State may immediately terminate this Contract.

B. Emergency Planning

If Contractor provides Work that is an extension of State work performed as part of the State of Colorado Emergency Operations Plan or for a publicly funded safety net program, as defined by C.R.S. § 24-33.5-701 et seq., Contractor shall perform the Work in accordance with the State's Emergency Operations Plan or continuity of operations plan in the event of an emergency. If requested, Contractor shall provide a plan and reporting information to ensure compliance with the State's Emergency Operations Plan and C.R.S. § 24-33.5-701 et seq.

C. Restrictions on Public Benefits

If applicable, Contractor shall comply with C.R.S. §§ 24-76.5-101 – 103 exactly as the State is required to comply with C.R.S. §§ 24-76.5-101 – 103.

D. Discrimination

Contractor shall not:

i. discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions.

ii. exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability.

Any person who thinks he/she has been discriminated against as related to the performance of this Contract has the right to assert a claim, Colorado Civil Rights Division, C.R.S. §24-34-301, et seq.

E. Criminal Background Check

Pursuant to C.R.S. §27-90-111 and CDHS Policy VI-2.4, any independent contractor, and its agent(s), who is designated by the Executive Director or the Executive Director's designee to be a contracting employee under C.R.S. §27-90-111, who has direct contact with vulnerable persons in a state-operated facility, or who provides state-funded services that involve direct contact with vulnerable persons in the vulnerable person's home or residence, shall:

i. submit to and successfully pass a criminal background check, and

ii. report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. §27-90-111 to the State.

Any Contractor or its agent(s), who does not comply with C.R.S. §27-90-111 and DHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

F. Fraud Policy

Contractor shall comply with the current CDHS Fraud Policy.

G. C-Stat - Performance Based Program Analysis and Management Strategy (C-Stat Strategy)

Without any additional cost to the State, Contractor shall collect and maintain Contract performance data, as determined solely by the State. Upon request, Contractor shall provide the Contract performance data to the State. This provision does not allow the State to impose unilateral changes to performance requirements.

REST OF PAGE INTENTIONALLY LEFT BLANK

21. SAMPLE OPTION LETTER (IF APPLICABLE)

State Agency Insert Department's or IHE's Full Legal Name	**Option Letter Number** Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	**Original Contract Number** Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx $0.00 Extension Terms State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 Total for All State Fiscal Years $0.00	**Option Contract Number** Insert CMS number or Other Contract Number of this Option **Contract Performance Beginning Date** Month Day, Year **Current Contract Expiration Date** Month Day, Year

1. **OPTIONS:**
   - **A.** Option to extend for an Extension Term
   - **B.** Option to change the quantity of Goods under the Contract
   - **C.** Option to change the quantity of Services under the Contract
   - **D.** Option to modify Contract rates
   - **E.** Option to initiate next phase of the Contract
2. **REQUIRED PROVISIONS:**
   - **A.** **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
   - **B.** **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Contract, as amended.
   - **C.** **For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
   - **D.** **For use with Option 1(E):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
   - **E.** **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.
3. **OPTION EFFECTIVE DATE:**
   - **A.** The effective date of this Option Letter is upon approval of the State Controller or , whichever is later.

STATE OF COLORADO Jared Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE SAMPLE ONLY – DO NOT SIGN By: Name & Title of Person Signing for Agency or IHE Date: SAMPLE ONLY – DO NOT SIGN	In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. **STATE CONTROLLER** **Robert Jaros, CPA, MBA, JD** SAMPLE ONLY – DO NOT SIGN Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval Option Effective Date: SAMPLE ONLY – DO NOT SIGN

STATEMENT OF WORK

These provisions are to be read and interpreted in conjunction with the provisions of the Amendment specified above.

I. Project Description:

In order to implement the Nurse Home Visitor Program (NHVP) efficiently and effectively and to promote the successful partnerships between state public entities and the private sector, responsibility for the program is divided between the Colorado Department of Human Services, which shall be responsible for financial administration of the program, and a health sciences facility at the University of Colorado, which shall be responsible for programmatic, clinical and technical support, monitoring and evaluation, including data collection, for the program. It is the intent of the general assembly that the state department and the health sciences facility work collaboratively to share information in order to promote efficient and effective program implementation; however, neither entity is responsible for the other entity's statutorily prescribed duties.

II. Performance Requirements/Deliverables:

1. The Contractor, in accordance with the terms and conditions of the Contract and this Exhibit, shall perform and complete, in a timely and satisfactory manner, all activities and services related to the fiscal management of the Colorado Nurse Home Visitor Program as set forth in CRS 26-6.4-107.2(a.5). The fiscal management provided by the contractor for the program must be deemed by the State to be acceptable and in good faith. For fiscal management to be "acceptable" it must comply with all, but not limited to, the items listed below, which are incorporated and made part hereof by reference.

   - Colorado Nurse Home Visitor Program Act, as described in § 26-6.4.101, C.R.S.
   - Colorado Nurse Home Visitor Program Fiscal Compliance Requirements
   - Rules Concerning the Nurse Home Visitor Program
   - State of Colorado Fiscal Rules
   - Generally Accepted Accounting Principles

2. The Contractor shall complete in a satisfactory manner and by the indicated date, all activities stated in the Areas Requiring Performance Improvement Plan or Funding Conditions in the NHVP Application Review Summary which shall be monitored by the health sciences facility.

3. The Contractor shall participate in meetings or trainings as requested by the State, including attendance by the Contractor's Nurse Supervisor and fiscal staff at the NHVP grantee workshop; and the Contractor must cover all costs as applicable.

4. The Contractor shall provide the nurse home visitor services in accordance with the grantee application and the budget, **Exhibit B**.

5. Funding adjustments may be executed during the term of this Contract in accordance with Additional Provisions, **Exhibit C**. The total amount of funding for the term of this Contract may not exceed the Total Amount Requested from the CDHS as provided in the attached Budget, **Exhibit B**.

6. Contractor shall submit Medicaid reimbursement requests for all eligible clients. Department of Health Care Policy and Financing (HCPF) oversees the submission of Medicaid reimbursement requests for compliance with HCPF procedures.

7. Contractor shall refer families participating in any and all programs in its agency such as the Special Supplemental Program for Women, Infants and Children (WIC), Healthy Communities, Immunization Clinics, Health Care Program for Children with Special Health Care Needs (HCP), etc. to appropriate enabling and direct care service programs in the community. Contractor shall provide all pregnant women in need of resources for prenatal medical care information about programs such as WIC, PNP, etc. as needed;

provide all individuals seeking reproductive health services with information about pregnancy planning, preconception health, the consequences of unintended pregnancies, and referrals to comprehensive family planning services; and shall ensure that all children ages birth through two years who may be eligible for early intervention services are referred to Early Intervention Colorado.

8. Contractor shall notify the State within thirty (30) days of a change of the NHVP Nurse Supervisor or fiscal staff and shall require any new NHVP Nurse Supervisor and fiscal staff working on NHVP services to participate in Fiscal Orientation within forty-five (45) days of employment.

9. In order to fulfill model requirements as an implementation site for the Nurse-Family Partnership home visiting program, Contractor shall comply with all elements of the Nurse Home Visitor Program Application Review Summary which is submitted to and monitored by the University of Colorado.

III. Monitoring:

The monitoring of this contract for compliance with fiscal performance requirements is based in part on a fiscal risk assessment conducted prior to contracting, contractor fiscal and programmatic performance during the contract period and contractor compliance with contractual terms and conditions during the contract period. Monitoring will be conducted by the *Program Manager (State Representative)* and methods used will include review of documentation reflective of performance, including reimbursement requests and other documentation as applicable. The contractor's performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

IV. Resolution of Non-Compliance:

The Contractor will be notified in writing within **30** calendar days of discovery of a compliance issue. Within **45** calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the *Program Manager* (State Representative) and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the Remedies section of the General Provisions of this contract.

V. Performance Measures and Monitoring

1. Fiscal performance monitoring by the State for this contract includes without limitation using the following criteria:

- Contractor maintains a caseload commensurate with funding allocation throughout the contract period.
- Contractor's cost reimbursement requests will be accurate and submitted on time (within 60 days of the last day of the month for which you are requesting reimbursement) and will be accurate (line items in the reimbursement request will align with line items in your approved budget).

COLORADO
Office of Early Childhood
Department of Human Services

Colorado Department of Human Services
Office of Early Childhood
BUDGET WITH JUSTIFICATION FORM

Contractor Name	Montrose County Department of Health & Human Services
Budget Period	July 1, 2019 - June 30, 2020
Project Name	Nurse Home Visitor Program
Counites Served	Montrose, Delta, Ouray, San Miguel, Gunnison

Program Contact Name, Title Phone Email	Theresa Balet, FNP, NFP Supervisor 970 252 5015 tbalet@montroseounty.net
Fiscal Contact Name, Title Phone Email	Kevin Miller, County Finance 970 252 5062 kmiller@montrosecounty.net
Funded Caseload	80

Expenditure Categories

Personnel Services - Salaried Employees

Position Title/ Employee Name	Description of Work (fringe for all employees includes workers' comp, FICA, Medicare, Unemployment, LTD, retirement & Health Benefits)*	Gross or Annual Salary	Fringe	Percent of Time on Project	Total Amount For Project	FY 2019-2020 A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
Theresa Balet, NFP Program Supervisor and Manager (salary)	Supervisors & manages all operations for the program site. Carries a small caseload.	$73,842	$11,614	90%	$76,910	$0	$0	$76,910
Kimberly Cook, RN,-Nurse Home Visitor	NHV who conducts home visits & coordinates schedules.	$64,992	$19,940	100%	$84,932	$0	$0	$84,932
Sheila Olson, RN-Nurse Home Visitor	NHV who conducts home visits & coordinates schedules.	$69,934	$20,967	100%	$90,901	$0	$0	$90,901
Valerie Stone, RN-Nurse Home Visitor	NHV who conducts home visits & coordinates schedules.	$44,928	$14,719	100%	$59,647	$0	$0	$59,647
Veronica Martiniez-Erie, Admin Assistant and interpreter	Responsible for data entry, MC billing, program support and interpreter for our Sanish speaking clients.	$38,815	$15,305	70%	$37,884	$0	$0	$37,884
Vivian Sisneros, billing	Assists with billing at the county level.	$41,854	$14,719	5%	$2,829	$0	$0	$2,829
				1. Total Personnel Services (including fringe benefits)	**$353,103**	**$0**	**$0**	**$353,103**

Supplies & Operating Expenses

Item	Description of Item	FY 2019-2020 A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
Office Operating Expenses (i.e. supplies)	Used to purchase materials for program, such as pens, paper, folders, binders and additional offise supplies	$0	$0	$2,700
Client Support Materials	Includes gifts for clients and children to promote emotional & social development, safety & positive relationships	$0	$0	$5,400
Printing & Publications	Printing of necessary forms and materials for the program	$0	$0	$2,200
Postal & Shipping Services	Covers cost for mailing and shipping of documents to clients or partnering sites and programs	$0	$0	$200
Communications (cellular, network services)	Covers costs for phone services, long distance, cell serices and data plans for tablets	$0	$0	$2,200
Required Model Materials	Covers costs of forms and required materials used during home visits and data collection	$0	$0	$1,400
Computers or laptops w/software	Covers costs to update software as needed	$0	$0	$500
Rent, maintenance, utilities (not included in indirect)	Covers costs for NFP offices in the HHS building	$0	$0	$15,165
	2. Total Supplies & Operating Expenses	**$0**	**$0**	**$29,765**

Training and Technical Assistance						FY 2019-2020		
Item	Description of Item	Per	Fee	#	Total	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
Program Support Fee	Required cost for NFP	Supervisor	$8,580	1	$8,580	$0	$0	$8,580
DANCE Education	Cost covers required NFP training	NHV	$625	1	$625	$0	$0	$625
DANCE Licensing	Cost covers required NFP training materials	NHV	$60	4	$240	$0	$0	$240
Nurse Consultation, 1st Supervisor	Required cost for NFP	Supervisor	$3,796	1	$3,796	$0	$0	$3,796
Administrator Education	NFP training for Administrator	Administrator	$585	1	$585	$0	$0	$585
Professional Development	Covers cost of additional training for NHVs	NHV/Supervisor	$600	5	$3,000	$0	$0	$3,000
				3. Total Training and Technical Assistance	$16,826	$0	$0	$16,826

Equipment (Over $5,000 Per Item)		FY 2019-2020		
Name	Description of Item	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
	No costs in this category will be reimbursed by CDHS.	$0	$0	$0
	4. Total Equipment	$0	$0	$0

Travel		FY 2019-2020		
Item	Description of Item	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
State Supervisor Meetings	Covers cost of travel, per diem and hotels for Supervisor to attend 3 State Supervisor meetings in Denver each year.	$0	$0	$3,000
NFP Training and Travel	Covers costs of travel to meetings and classes, as well as hotel and per diem for meals when overnight is required.	$0	$0	$3,500
County Vehicle Charges	County vehicles are used for all travel, including home visits, These charges covers fleet charges and replacement accural as well as motor pool expenses and mileage reimbursement when personal cars are used.	$0	$0	$16,000
Public Health in the Rockies Conference	Cost for one nurse to attend Public Health in the Rockies Conference	$0	$0	$1,000
	5. Total Travel	$0	$0	$23,500

Contractors/Consultants (payments to third parties or entities)		FY 2019-2020		
Name	Description of Item	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
Gunnison County NFP Contract	This cost covers program costs for NHV in Gunnison @ 0.75 FTE and includes. salary and benefits.	$0	$0	$65,411
Supplies & Operating Expenses	Covers costs for Gunnison County contractor office supplies, postage, photocopy, printing & publications, cell phone, translator, etc.	$0	$0	$3,300
Travel & Transportation	Covers costs for Gunnison County countractor transportation, motor pool expenses & travel to meetings, professional development, hotel and per diem	$0	$0	$6,300
IT	Covers IT support for Gunnison NHV			$1,894
Outside Services	Covers costs for consultation with Mental health providers when dealing with challenging clients	$0	$0	$500
	6. Total Contractors/Consultants	$0	$0	$77,405
	MODIFIED TOTAL DIRECT COSTS (MTDC)	$0	$0	$500,599

Indirect Costs [not to exceed 10% unless Negotiated Federal Indirect Cost rate or Negotiated State Indirect Cost rate is attached]		FY 2019-2020		
Item	Description of Item	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
State Federal Indirect cost rate	25% cap of modified total direct costs (Negotiated rate with CDPHE is 60%)	$0	$0	$125,150
	Total Indirect	$0	$0	$125,150
	TOTAL	$0	$0	$625,749

ADDITIONAL PROVISIONS

1. SERVICE PROVISIONS

The Contractor shall provide the services according to the plans submitted in the "Statement of Work", attached and incorporated herein by this reference as **EXHIBIT A**. In all cases, the descriptions, plans, timetables, tasks, duties, and responsibilities of the Contractor as described in the Statement of Work, shall be adhered to in the performance of the requirements of this contract. In the event of a conflict, the terms and conditions of this contract shall control over the Statement of Work. Any significant changes to the Statement of Work (SOW) require an amendment to the contract.

2. GOALS AND OBJECTIVES

The Contractor shall be responsible for the achievement of any goals and objectives as specified within the Statement of Work (**EXHIBIT A**) of this contract unless written notice of any modifications are furnished by the State to the Contractor allowing adequate time for compliance during the term of this contract.

3. COPY OF SUBCONTRACT

The Contractor shall provide to the State a copy of any executed subcontract between the Contractor and any provider of services to fulfill any requirements of this contract. Subcontracts shall be emailed to the Contract Representative upon execution.

4. PAYMENT

In consideration of the provision of services and reporting and subject to all payment and price provisions and further subject to verification by the State of full and satisfactory compliance with the terms of this contract, the State shall pay to the Contractor an amount not to exceed the amount specified in the Budget (**EXHIBIT B**), of this contract.

A. The Contractor shall submit requests for payment to CDHS_OEC_Invoicing@state.co.us no less than monthly on forms prescribed and provided by the State.

B. Payment shall be made on a cost reimbursement basis for services rendered.

C. Timely Invoicing - Invoices shall be submitted no later than 45 days following the last day of the month. End of State Fiscal Year invoices are on a compressed timeframe. Invoices for all services provided prior to June 30th shall be invoiced by July 5th. Contractors who are unable to provide the invoice by July 5th shall notify the state of the amount to be booked as accounts payable by July 13th by sending an email to CDHS_OEC_Invoicing@state.co.us. Final invoices for services prior to June 30th shall be submitted by September 14th. Invoices received after September 14th may not be paid.

D. The Contractor shall maintain source documentation to support all payment requested pursuant to this contract. All source documentation shall be provided to the State by the Contractor upon request.

E. It is understood that the State reserves the right to offset funds pursuant to this contract based on the discovery of overpayment or improper use of funds by the Contractor. Overpayment or improper use of funds is interpreted to apply to specific terms of prior year contracts, and includes without limitation requirements of the Generally Accepted Accounting Principles (GAAP) issued by the American Institute of Certified Public Accountants, and applicable sections of the Colorado Revised Statutes.

5. PARTICIPATION

The Contractor representative(s) is required to participate in any Office of Early Childhood sponsored meetings related to this contract.

6. SUPPLANTING

Payments made to the Contractor under this contract will supplement and not supplant other state, local or federal expenditures for services associated with this contract.

7. BUDGET CHANGES

Contractor may request in writing adjustments to the direct costs in the current year budget **(EXHIBIT B)** not to exceed 10% of the total budget. Requests shall be made in the form of a written budget revision request to the appropriate program staff. Written approval for the budget revision shall be required prior to any changes to the budget related to the budget revision request. The total dollar amount of the contract budget cannot be changed as a result of the budget revision request. Budget adjustment requests over 10% and/or changes to the total dollar amount of the budget require a formal amendment. No adjustments to the Indirect Costs portion of the budget are allowable without a formal amendment.

Contractor may request in writing up to a 5% increase or decrease to the "Gross or Annual Salary" of an individual employee if a position currently listed in the contract becomes vacant and the new incoming employee will be hired at a higher or lower salary. No increase or decrease within the salary range is authorized without prior written approval from CDHS. Adding additional staff requires an amendment to the contract. Vacancy savings cannot be used to change salary amounts for existing personnel without an amendment. Any change to personnel requires prior written approval from CDHS staff. This process will never change the Contract Maximum Amount. Contractor must use available unused funds from either vacancy savings or another category within the contract. The revision request may not at any time compromise the integrity of the funded program as determined by CDHS program staff.

8. TRAVEL

A. Mileage shall not exceed the Federal mileage rate per https://www.gsa.gov/travel-resources or State mileage rate per https://www.colorado.gov/pacific/osc/travel-fiscal-rule.

B. Per Diem shall not exceed Federal GSA per diem rates for the area of travel per https://www.gsa.gov/travel-resources or State per diem rate for the area of travel per https://www.colorado.gov/pacific/osc/travel-fiscal-rule.

C. Hotel rates cannot exceed any rate established for conference attendance.

D. Usage of airfare or Out of State Travel requires pre-approval from CDHS.

9. MANDATED REPORTING

A. All program staff are required by law to report suspected child abuse and neglect. Mandatory reporters must report suspected child abuse and neglect to the local county child welfare agency, the local law enforcement agency, or by calling the child abuse reporting hotline system at 1-844-CO-4KIDS (1-844-264-5437).

B. All program staff are required to take the online mandatory reporter training on the CDHS Child Welfare Training System: https://www.coloradocwts.com/mandated-reporter-training.

12. GENERAL ACCOUNTING ENCUMBRANCE (GAE)

A. Payment for Nurse Home Visitor Program (NHVP) to all contractors will be made as incurred, in whole or in part, from the total available funds not to exceed $50,000 (FY20), to be utilized for NHVP as follows:

i. Nurse Family Partnership (NFP) training costs, often sites experience staff turnover in a fiscal year and they will be permitted to use the GAE to cover costs of NFP required training that was not included in their FY 19-20 budget.

ii. Travel costs associated with NFP training. For example, if a site hires a new Nurse Home Visitor, and this staff member is required to attend NFP orientation, the site will be able to bill the GAE for the training registration and travel expenses for the training. Travel costs may include mileage, hotel accommodations and per diem for the staff member attending the training.

iii. Operational items not included in their FY19-20 budget such as cell phones, tablets, laptops. Due to staff turnover, sites are to not include potential operational item expenses in their FY 19-20 budgets, but rather utilize the GAE in order to purchase necessary items for new staff.

It is understood each contractor shall obtain prior written approval from CDHS prior to incurring any costs related to NHVP GAE funds. It is further understood and agreed that the maximum amount of funds available state wide for the current fiscal year will be divided between all of the NHVP contracts. The State shall not be liable for any costs incurred without obtaining prior approval for the expenditure of NHVP GAE funds. The NHVP program manager will approve GAE expenditures on a case-by case basis and the state intermediary must concur that they believe the expenditure to be necessary to improving the program. NHVP program manager must approve the expenditure in writing.

B. Payment to Contractor is made from available funds encumbered and shared across multiple contractors. The State may increase or decrease the total funds encumbered at its sole discretion and without formal notice to Contractor. No minimum payment is guaranteed to Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.

C. Invoices shall be submitted separately for pre-approved expenditures.

i. The Contractor shall submit requests for payment to CDHS_OEC_Invoicing@state.co.us.

EXHIBIT D - HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("Agreement") between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as "Covered Entity" and the Contractor is referred to as "Business Associate". Unless the context clearly requires a distinction between the Contract and this Agreement, all references to "Contract" shall include this Agreement.

1. PURPOSE

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information ("PHI"). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") enacted under the American Recovery and Reinvestment Act of 2009 ("ARRA") Pub. L. No. 111–5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the "HIPAA Rules") and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and all other applicable laws and regulations, all as may be amended.

2. DEFINITIONS

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

a. Business Associate. "Business Associate" shall have the same meaning as the term "business associate" at 45 C.F.R. 160.103, and shall refer to Contractor.

b. Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103, and shall refer to the State.

c. Information Technology and Information Security. "Information Technology" and "Information Security" shall have the same meanings as the terms "information technology" and "information security", respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Permitted Uses and Disclosures.

i. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.

i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.

ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:

A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;

B. the person notifies Business Associate of any Breach involving PHI of which it is aware.

iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.

b. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).

c. Impermissible Uses and Disclosures.

i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.

ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.

d. Business Associate's Subcontractors.

i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.

ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.

iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.

e. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such

system including, but not limited to, any policies promulgated by the Office of Information Technology and available at http://oit.state.co.us/about/policies.

f. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.

g. Amendment of PHI.

   i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

   ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.

h. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.

i. Restrictions and Confidential Communications.

   i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:

      A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or

      B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.

   ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.

   iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.

j. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.

k. Audit, Inspection and Enforcement.

   i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.

ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

l. Appropriate Safeguards.

i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.

ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.

iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.

iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

m. Safeguard During Transmission.

i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.

ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

n. Reporting of Improper Use or Disclosure and Notification of Breach.

i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.

ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.

iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.

iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.

o. Business Associate's Insurance and Notification Costs.

i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:

A. loss of PHI data;

B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and

C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.

ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).

iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.

iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

p. Subcontractors and Breaches.

i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.

ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.

q. Data Ownership.

i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.

r. Retention of PHI. Except upon termination of this Agreement as provided in Section 5 below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h above, for a period of six years.

4. OBLIGATIONS OF COVERED ENTITY

a. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.

b. Notice of Changes.

i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.

ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. TERMINATION

a. Breach.

i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.

ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

b. Effect of Termination.

i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.

ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of

Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. INJUNCTIVE RELIEF

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

7. LIMITATION OF LIABILITY

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

8. DISCLAIMER

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

9. CERTIFICATION

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

10. AMENDMENT

a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.

i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.

ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain

written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.

iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.

iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:

A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or

B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.

b. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

12. INTERPRETATION AND ORDER OF PRECEDENCE

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

13. SURVIVAL

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.

APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

This Appendix ("Appendix") to the HIPAA Business Associate Agreement ("Agreement") is s an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to "Contract" or "Agreement" shall include this Appendix.

1. PURPOSE

This Appendix sets forth additional terms to the Agreement. Any sub-section of this Appendix marked as "Reserved" shall be construed as setting forth no additional terms.

2. ADDITIONAL TERMS

a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:

   i. Reserved.

b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:

   i. Reserved.

c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:

   i. Reserved.

d. Definition of Receipt of PHI. Business Associate's receipt of PHI under this Contract shall be deemed to occur, and Business Associate's obligations under the Agreement shall commence, as follows:

   i. Reserved.

e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate's use and disclosure of PHI under the Contract:

   i. Reserved.

f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:

   i. Reserved.

Critical Incident Reporting

Within 48 hours of the occurrence of a critical incident involving any child or client and/or an on duty agency staff member of any family support program staff funded through the Office of Early Childhood (OEC), the agency must report known details of the critical incident to the OEC Program Manager for the involved family support program. The OEC acknowledges that frequently information unfolds over time and may require clarification as more details are identified. Critical incidents may include, but are not limited to: awareness of an egregious incident or suspected incident of abuse and/or neglect, near fatality, or fatality of any child currently enrolled in a family support program; involuntary termination of a program staff's employment; criminal allegations involving program staff and related to his/her employment; potential negative media attention about the family support program; any major injury or threat to the security of an agency staff member while on duty and visiting an enrolled child or family.

It is required to report any critical incident ***within 48 hours*** of the occurrence with specific and accurate details pertaining to the incident. Failure to report a critical incident to the Office of Early Childhood Home Visiting Unit may result in breach of contract.

Examples of situations which may qualify as a critical incident are detailed below. This list is not exhaustive and additional situations may also qualify. *If you are unsure if an instance requires reporting, contact the CDHS Home Visiting Director and/or CDHS Program Manager as soon as possible for guidance.*

- Falsification of client records
- Suspected financial fraud (including a pattern of mistakes calculating mileage reimbursement)
- Intoxication of an on-duty Home Visiting staff member
- Home Visiting staff member deemed not fit for duty
- Termination of employee
- Near death of a child or death of a child
- Severe injury to a child, severe illness of a child which may result in fatality
- Subpoenas for HV staff to attend court in relation to client situation, or request for HV staff to provide depositions or taped testimony in client case related to cases of abuse or neglect

Reporting requirements

Contracted agency is required to notify the Home Visiting Unit Director and/or the Home Visiting Program Manager within 48 hours' notice of critical incident via phone call or written documentation via e-mail. Agency is required to submit written documentation of the incident or to provide the information requested via phone.

Critical incident information sharing policy

1. Home Visiting Program Director and/or Program Manager is notified of critical incident within 48 hours.
2. If Home Visiting Program Director and / or Program Manager is notified of critical incident by phone, they document communication regarding the critical incident in writing.

3. Home Visiting Program Director and / or Program Manager will ask site what supports they need based on the incident. For example: sites may request additional funding if needing mental health support for a Home Visitor and/or Supervisor upon a notification of a child fatality.
3. Any notification of the critical incident shared by e-mail will be encrypted per contracted agency's requirements.
4. Home Visiting Program Director and/or Program Manager notify Office of Early Childhood Division of Community and Family Support Division Director, Office of Early Childhood Director, and Communications and Project Manager, within 48 hours of report from site.
4. If incident has a possibility of having Child Welfare implications, Home Visiting Program Director and / or Program Manager shall share report with the Child Maltreatment Prevention Unit Director and the Child Protection Services Manager to ensure all appropriate steps have been completed for Child Welfare reporting.
5. In instances where financial fraud or infraction to contractual provisions are suspected, information shall be shared with the OEC CFO and Contracts Manager.

Site implications

- Termination of HV staff will be recommended by the OEC if a critical incident includes the following:

- Falsification of client records
- Falsification of documentation
- Financial fraud of any kind

INTERGOVERNMENTAL AGREEMENT
RE: NURSE HOME VISITOR PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT shall become effective the 1st day of July, 2019 between the County of Montrose, by and through its Board of County Commissioners ("Montrose"), a body politic and corporate, duly organized and existing within the State, whose address is 317 South Second Street, Montrose, CO 81401, and the County of Gunnison, by and through its Board of County Commissioners ("Gunnison"), a body politic and corporate, duly organized and existing within the State of Colorado, whose address is 200 E. Virginia, Gunnison, CO 81230.

RECITALS

WHEREAS, Montrose has entered into a Contract dated July 1, 2014 with the State of Colorado regarding the implementation of the Nurse Home Visitor Program ("NHVP") for several area counties, including Gunnison County. A copy of Contract #20 IHIA 129469 is attached as Exhibit A. Together, these agreements are collectively referred to herein as "State Task Order".

WHEREAS, such State Task Order allocates monies for provision of NHVP services in Gunnison County, and

WHEREAS, Montrose desires to enter into this subcontract for the provision of NHVP services in Gunnison County, and Gunnison desires to provide such services on behalf of Montrose, and in compliance with the State Task Order, and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Montrose and Gunnison enter into this Intergovernmental Agreement as follows:

SECTION 1.
DESCRIPTION OF WORK

The purpose of the NHVP is to provide trained visiting nurses to help educate mothers on the importance of nutrition and avoiding alcohol and drugs, including nicotine, and to assist and educate mothers in providing general care for their children.

Gunnison shall provide NHVP services within Gunnison County, and so long as this Agreement is in effect, Montrose shall have no duty to provide NHVP services in Gunnison County. In providing such services, Gunnison shall comply with all requirements of the State Task Order (see attached Exhibits A and B), and with all Federal, State and Municipal laws, rules, and regulations that are now, or may in the future, become applicable to the work performed under this Agreement and the State Task Order.

LPT

SECTION II.
PAYMENTS

In consideration of Gunnison's provision of NHVP services in Gunnison County, Montrose shall make monthly payments to Gunnison upon receipt of invoices evidencing the work completed. Such payments may not exceed $77,405.00, which is the total amount allocated in Fiscal Year 2019-2020 for services in Gunnison County. It is specifically understood and agreed that Montrose's obligation to pay Gunnison under this agreement is dependent upon, and limited to, the receipt of monies from the State for funding the NHVP in accordance with the State Task Order. Montrose shall not be obligated to pay Gunnison out of Montrose County's separate funds, or from any other source of funds outside the State funding for the NHVP

SECTION III.
RELATIONSHIP OF PARTIES

This Agreement is intended to create an Independent Contracting relationship. Gunnison shall be responsible for hiring or retaining, and compensating, all staff necessary to provide the services contemplated under this Agreement. Neither Gunnison, nor any agent or employee of Gunnison, shall be deemed to be an agent or employee of Montrose. Gunnison shall remain responsible for payment of any and all required employment taxes, income taxes, or other applicable taxes, on any monies paid by Gunnison for provision of services under this Agreement. Gunnison acknowledges that Gunnison and its employees are not entitled to unemployment insurance benefits unless Gunnison, or a third party, provides such coverage, and that Montrose does not pay for, or otherwise provide, such coverage.

Gunnison shall have no authorization, express or implied, to bind Montrose to any agreements, liability, or understanding, except as expressly set forth herein.

SECTION IV.
INSURANCE, LICENSING, LIABILITY

Gunnison shall provide and keep in force worker's compensation and unemployment compensation insurance in amounts required by law. Gunnison shall maintain general liability insurance with minimum limits of $600,000 per claim and $1,000,000 aggregate per occurrence. Gunnison acknowledges that it shall be solely responsible for the acts of Gunnison, and its employees and agents.

With respect to the individual Nurse(s) utilized by Gunnison to provide services under this Agreement, and any other professional hired or retained to provide such services, Gunnison shall ensure that the individual's professional license is valid and current, and that professional malpractice liability insurance is in force to cover the acts and omissions of the professional during the term of this Agreement.

Proof of required insurance coverages shall be provided to Montrose upon request.

SECTION V.
DURATION

The term of this Intergovernmental Agreement shall commence on the 1st of July, 2019 and shall continue through June 30, 2020. The term of this Intergovernmental Agreement, may not exceed one year.

It is understood that this Intergovernmental Agreement may be terminated by either party, without cause, upon thirty (30) days written notice to the other party.

SECTION VI.
SUPERVISION

In the provision of services under this Agreement, Gunnison is an independent contractor with authority to control and direct the performance of the details of the work, Montrose being interested only in the results obtained. However, Montrose shall have the right to monitor and evaluate the performance of Gunnison to ensure that the terms of this Agreement, and the requirements of the State Task Order, are being satisfactorily met.

SECTION VII.
GENERAL PROVISIONS

1. The parties stipulate and agree that the rights and duties contemplated under this Intergovernmental Agreement shall not be assigned, delegated, or otherwise transferred to a third party without the prior written consent and agreement of the parties.

2. Each and every clause and covenant of this Agreement shall extend to, benefit, and bind the successors and assigns of the parties hereto respectively.

3. Any and all modifications, alterations, additions, and/or changes to any term, condition, or agreement contained herein, shall be void and not binding on either party unless set forth in writing and signed by both parties.

4. This Agreement, attached exhibits, and any written amendments attached, represent the full understanding between the parties.

5. Nothing in this Agreement shall be construed as a waiver of the governmental immunity available to both parties under Colorado statute or other laws.

6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the respective parties have set their signatures effective the day and year first above written.

MONTROSE COUNTY HEALTH AND HUMAN SERVICES

_____
Stephen C. Tullos, Director

DATE: _____

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS

_____
Chairman

DATE: _____

MONTROSE BOARD OF COUNTY COMMISSIONERS

_____
Sue Hansen, Chair

DATE: _____

ATTEST:

_____
Deputy Clerk to the Board

Date: _____

EXHIBIT A

COLORADO
Department of Human Services

20 IHIA 129469
eClearance:

STATE OF COLORADO
DEPARTMENT OF HUMAN SERVICES CONTRACT

SIGNATURE AND COVER PAGES

State Agency Colorado Department of Human Services Office of Early Childhood Division of Community and Family Support	**Contractor** Montrose County Department of Health and Human Services Contractor's State of Incorporation: Colorado
Contract Maximum Amount Initial Term State Fiscal Year 2020 $625,749* Extension Terms N/A *An appropriation for NHVP General Accounting Encumbrance (GAE) is hereby added to this contract. The maximum payable for GAE is subject to appropriated funds, not to exceed $50,000 which is split among other NHVP vendors. See Exhibit C: Additional Provisions. Maximum Amount for All Fiscal Years $625,749*	**Contract Performance Beginning Date** The later of the Effective Date or July 1, 2019 **Initial Contract Expiration Date** June 30, 2020 Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 Years from its Performance Beginning Date.
Pricing/Funding Price Structure: Cost Reimbursement Contractor shall invoice: Monthly Fund Source: State General Fund	**Options** The State shall have the following options if indicated with "Yes," as further described in §2.C and §5.B.v: Option to Extend Term per §2.C: Yes Option to Increase or Decrease Maximum Amount per §5.B.v: Yes
Insurance Contractor shall maintain the following insurance if indicated with "Yes," as further described in **§12**: Worker's Compensation: Yes General Liability: Yes Automobile Liability: **Yes** Protected Information: **Yes** Professional Liability Insurance: **No** Crime Insurance: **No**	**Miscellaneous** Authority to enter into this Contract exists in: C.R.S. 26-6.4-107. Law-Specified Vendor Statute (if any): C.R.S. 26-6.4-107 Procurement Method: Law Specified Solicitation Number (if any): N/A
State Representative Julie Becker, Home Visiting Program Director Colorado Department of Human Services, Office of Early Childhood, Division of Community and Family Support 1575 Sherman Street, 1st Floor Denver, CO 80203 Phone - 303-866-5205; Email - julie.becker@state.co.us	**Contractor Representative** Theresa Balet 1845 South Townsend Avenue Montrose, CO 81401 Phone - 970-252-5015 Email - tbalet@montrosecounty.net

Exhibits

The following Exhibits are attached and incorporated into this Contract:
Exhibit A - Statement of Work
Exhibit B - Budget
Exhibit C - Additional Provisions
Exhibit D - HIPAA Business Associate Addendum
Exhibit E - Critical Incident Reporting

Contract Purpose

In accordance with the provisions of this contract and its exhibits and attachments, the Contractor shall: Provide trained visiting nurses to help educate mothers on the importance of nutrition and avoiding alcohol and drugs, including nicotine, and to assist and educate mothers in providing general care for their children.

Signature Page begins on next page →

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

CONTRACTOR Montrose County Department of Health and Human Services _____ By: Sue Hansen, Chair, Board of County Commissioners Date: _____	**STATE OF COLORADO** Jared Polis, Governor Department of Human Services Michelle Barnes, Executive Director _____ By: Mary Anne Snyder, Director, Office of Early Childhood Date: _____
2nd State or Contractor Signature if Needed _____ By: Date: _____	**LEGAL REVIEW** Phil Weiser, Attorney General By:_____ Assistant Attorney General Date: _____

In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Clint Woodruff / Andrea Eurich / Travis Yoder

Effective Date:_____

-- Signature and Cover Pages End --

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1. PARTIES

This Contract is entered into by and between Contractor named on the Signature and Cover Pages for this Contract (the "Contractor"), and the STATE OF COLORADO acting by and through the Department of Human Services (the "State" or "CDHS"). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

B. Initial Term

The Parties' respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Signature and Cover Pages for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover Pages for this Contract (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Extension Terms - State's Option

If the Signature and Cover Pages for this Contract shows that the State has the Option to Extend Term, then the State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, at the same rates and under the same terms specified in the Contract (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to **§21** "Sample Option Letter." The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date, or the number of years specified on the Signature and Cover Pages if such number is less than 5 years, absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§15,** may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§15.** The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a**.

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made.

Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**Breach of Contract**" means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.

B. "**Business Day**" means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1) C.R.S.

C. "**Chief Procurement Officer**" means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.

D. "**CJI**" means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under 24-72-302 C.R.S.

E. "**Contract**" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto. For purposes of clarification and the removal of any doubt, subject to any future modifications thereto, the Signature and Cover Pages and Sections 1 through 21, as identified in the Table of Contents herein above, shall constitute the "main body" of this Contract exclusively.

F. "**Contract Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.

G. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

H. **"End of Term Extension"** means the time period defined in **§2.D**.

I. **"Effective Date"** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State's Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature and Cover Page for this Contract.

J. "**Exhibits**" means the exhibits and attachments included with this Contract as shown on the Signature and Cover Pages for this Contract..

K. **"Extension Term"** means the time period defined in **§2.C.**

L. "**Goods**" means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.

M. **"Incident"** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.,* C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

N. **"Initial Term"** means the time period defined in **§2.B**.

O. "**Party**" means the State or Contractor, and "Parties" means both the State and Contractor.

P. "**PCI**" means payment card information including any data related to credit card holders' names, credit card numbers, or the other credit card information as may be protected by state or federal law.

Q. "**PII**" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.

R. "**PHI**" means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

S. "**Services**" means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.

T. **"State Confidential Information"** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

U. **"State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

V. **"State Fiscal Year"** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

W. **"State Records"** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

X. "**Subcontractor**" means third-parties, if any, engaged by Contractor to aid in performance of the Work.

Y. "**Tax Information**" means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

Z. "**Work**" means the Goods delivered and Services performed pursuant to this Contract.

AA. "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of the Exhibits. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

5. PAYMENTS TO CONTRACTOR

A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that term shown on the Signature and Cover Pages for this Contract.

B. Payment Procedures

i. Invoices and Payment

a. The State shall pay Contractor in the amounts and in accordance with the Exhibits.

b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on

delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in **§2.E.**

v. Option to Increase Maximum Amount

If the Signature and Cover Pages for this Contract show that the State has the Option to Increase or Decrease Maximum Amount, then the State, at its discretion, shall have the option to increase or decrease the statewide quantity of Goods and Services based upon the rates established in this Contract, and increase the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to **§21** "Sample Option Letter." Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to **§17** or pursuant to any other Exhibit, for any contract having a term longer than 3 months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and

standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State at the time or times specified by the State in this Contract, or, if no time is specified in this Contract, not later than 5 Business Days following the end of each calendar quarter.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 5 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Signature and Cover Pages as provided in **§15**.

C. Performance Outside the State of Colorado or the United States, §24-102-206 C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with **§15** and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 3 years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and

monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State, at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written

approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

D. Contractor shall maintain a written conflict of interest policy. Contractor shall provide the written conflict of interest policy to the State upon request.

10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract to the extent that such insurance policies are required as shown on the Signature and Cover Page for this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

i. $1,000,000 each occurrence;

ii. $1,000,000 general aggregate;

iii. $1,000,000 products and completed operations aggregate; and

iv. $50,000 any 1 fire.

B. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

C. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $2,000,000 general aggregate.

iii. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 10 or fewer individuals or revenues of $250,000 or less, Contractor shall maintain limits of not less than $50,000.

iv. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 25 or fewer individuals or revenues of $500,000 or less, Contractor shall maintain limits of not less than $100,000.

D. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

E. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

F. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

G. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

H. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§15** within 7 days of Contractor's receipt of such notice.

I. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

J. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

K. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§12** for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in the

Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in **§11,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary

to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State, **(i)** secure that right to use such Work for the State and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in **§11** and the dispute resolution process in **§13**, shall have all remedies available at law and equity.

13. STATE'S RIGHT OF REMOVAL

The State retains the right to demand, at any time, regardless of whether Contractor is in breach, the immediate removal of any of Contractor's employees, agents, or subcontractors from the work whom the State, in its sole discretion, deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the state to be contrary to the public interest or the State's best interest.

14. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in **§14.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDHS as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109 and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

15. NOTICES AND REPRESENTATIVES

Each individual identified on the Signature and Cover Pages shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth on the Signature and Cover Pages for this Contract or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Signature and Cover Pages for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is $100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

18. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract

B. Subcontracts

Unless other restrictions are required elsewhere in this Contract, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any Work after that Subcontractor's subcontract has been rejected by the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **§18.A.**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

K. Order of Precedence

In the event of a conflict or inconsistency between this Contract and any Exhibits or attachments such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

i. HIPAA Business Associate Agreement (if any).

ii. Colorado Special Provisions in **§19** of the main body of this Contract.

iii. The provisions of the other sections of the main body of this Contract.

iv. Any other Exhibit(s) shall take precedence in alphabetical order.

L. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

M. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

N. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

O. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.* C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

P. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§18.A.,** this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

Q. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

R. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

S. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

T. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term

of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

U. Indemnification

i. Applicability

This entire **§18.U** does not apply to Contractor if Contractor is a "public entity" within the meaning of the GIA.

ii. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

iii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of **§8** may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

iv. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental

Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the

term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[***Not applicable to intergovernmental agreements***] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and CDHS within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a

Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to CDHS a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101 *et seq.*, C.R.S., CDHSmay terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101 *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

20. DEPARTMENT OF HUMAN SERVICES PROVISIONS

A. Exclusion, Debarment and/or Suspension

Contractor represents and warrants that Contractor, its employees, agents, assigns, or Subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program by any federal or State of Colorado department or agency. If Contractor, its employees, agents, assigns, or Subcontractors, are excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of this Contract, Contractor shall notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Contractor, the State may immediately terminate this Contract.

B. Emergency Planning

If Contractor provides Work that is an extension of State work performed as part of the State of Colorado Emergency Operations Plan or for a publicly funded safety net program, as defined by C.R.S. § 24-33.5-701 et seq., Contractor shall perform the Work in accordance with the State's Emergency Operations Plan or continuity of operations plan in the event of an emergency. If requested, Contractor shall provide a plan and reporting information to ensure compliance with the State's Emergency Operations Plan and C.R.S. § 24-33.5-701 et seq.

C. Restrictions on Public Benefits

If applicable, Contractor shall comply with C.R.S. §§ 24-76.5-101 – 103 exactly as the State is required to comply with C.R.S. §§ 24-76.5-101 – 103.

D. Discrimination

Contractor shall not:

i. discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions.

ii. exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability.

Any person who thinks he/she has been discriminated against as related to the performance of this Contract has the right to assert a claim, Colorado Civil Rights Division, C.R.S. §24-34-301, et seq.

E. Criminal Background Check

Pursuant to C.R.S. §27-90-111 and CDHS Policy VI-2.4, any independent contractor, and its agent(s), who is designated by the Executive Director or the Executive Director's designee to be a contracting employee under C.R.S. §27-90-111, who has direct contact with vulnerable persons in a state-operated facility, or who provides state-funded services that involve direct contact with vulnerable persons in the vulnerable person's home or residence, shall:

i. submit to and successfully pass a criminal background check, and

ii. report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. §27-90-111 to the State.

Any Contractor or its agent(s), who does not comply with C.R.S. §27-90-111 and DHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

F. Fraud Policy

Contractor shall comply with the current CDHS Fraud Policy.

G. C-Stat - Performance Based Program Analysis and Management Strategy (C-Stat Strategy)

Without any additional cost to the State, Contractor shall collect and maintain Contract performance data, as determined solely by the State. Upon request, Contractor shall provide the Contract performance data to the State. This provision does not allow the State to impose unilateral changes to performance requirements.

REST OF PAGE INTENTIONALLY LEFT BLANK

21. SAMPLE OPTION LETTER (IF APPLICABLE)

State Agency Insert Department's or IHE's Full Legal Name	**Option Letter Number** Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	**Original Contract Number** Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx $0.00 Extension Terms State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 Total for All State Fiscal Years $0.00	**Option Contract Number** Insert CMS number or Other Contract Number of this Option **Contract Performance Beginning Date** Month Day, Year **Current Contract Expiration Date** Month Day, Year

1. **OPTIONS:**
   - **A.** Option to extend for an Extension Term
   - **B.** Option to change the quantity of Goods under the Contract
   - **C.** Option to change the quantity of Services under the Contract
   - **D.** Option to modify Contract rates
   - **E.** Option to initiate next phase of the Contract
2. **REQUIRED PROVISIONS:**
   - **A.** **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
   - **B.** **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Contract, as amended.
   - **C.** **For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
   - **D.** **For use with Option 1(E):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
   - **E.** **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.
3. **OPTION EFFECTIVE DATE:**
   - **A.** The effective date of this Option Letter is upon approval of the State Controller or , whichever is later.

STATE OF COLORADO Jared Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE SAMPLE ONLY – DO NOT SIGN By: Name & Title of Person Signing for Agency or IHE Date: SAMPLE ONLY – DO NOT SIGN	In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. **STATE CONTROLLER** **Robert Jaros, CPA, MBA, JD** SAMPLE ONLY – DO NOT SIGN Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval Option Effective Date: SAMPLE ONLY – DO NOT SIGN

STATEMENT OF WORK

These provisions are to be read and interpreted in conjunction with the provisions of the Amendment specified above.

I. Project Description:

In order to implement the Nurse Home Visitor Program (NHVP) efficiently and effectively and to promote the successful partnerships between state public entities and the private sector, responsibility for the program is divided between the Colorado Department of Human Services, which shall be responsible for financial administration of the program, and a health sciences facility at the University of Colorado, which shall be responsible for programmatic, clinical and technical support, monitoring and evaluation, including data collection, for the program. It is the intent of the general assembly that the state department and the health sciences facility work collaboratively to share information in order to promote efficient and effective program implementation; however, neither entity is responsible for the other entity's statutorily prescribed duties.

II. Performance Requirements/Deliverables:

1. The Contractor, in accordance with the terms and conditions of the Contract and this Exhibit, shall perform and complete, in a timely and satisfactory manner, all activities and services related to the fiscal management of the Colorado Nurse Home Visitor Program as set forth in CRS 26-6.4-107.2(a.5). The fiscal management provided by the contractor for the program must be deemed by the State to be acceptable and in good faith. For fiscal management to be "acceptable" it must comply with all, but not limited to, the items listed below, which are incorporated and made part hereof by reference.

   - Colorado Nurse Home Visitor Program Act, as described in § 26-6.4.101, C.R.S.
   - Colorado Nurse Home Visitor Program Fiscal Compliance Requirements
   - Rules Concerning the Nurse Home Visitor Program
   - State of Colorado Fiscal Rules
   - Generally Accepted Accounting Principles

2. The Contractor shall complete in a satisfactory manner and by the indicated date, all activities stated in the Areas Requiring Performance Improvement Plan or Funding Conditions in the NHVP Application Review Summary which shall be monitored by the health sciences facility.

3. The Contractor shall participate in meetings or trainings as requested by the State, including attendance by the Contractor's Nurse Supervisor and fiscal staff at the NHVP grantee workshop; and the Contractor must cover all costs as applicable.

4. The Contractor shall provide the nurse home visitor services in accordance with the grantee application and the budget, **Exhibit B**.

5. Funding adjustments may be executed during the term of this Contract in accordance with Additional Provisions, **Exhibit C**. The total amount of funding for the term of this Contract may not exceed the Total Amount Requested from the CDHS as provided in the attached Budget, **Exhibit B**.

6. Contractor shall submit Medicaid reimbursement requests for all eligible clients. Department of Health Care Policy and Financing (HCPF) oversees the submission of Medicaid reimbursement requests for compliance with HCPF procedures.

7. Contractor shall refer families participating in any and all programs in its agency such as the Special Supplemental Program for Women, Infants and Children (WIC), Healthy Communities, Immunization Clinics, Health Care Program for Children with Special Health Care Needs (HCP), etc. to appropriate enabling and direct care service programs in the community. Contractor shall provide all pregnant women in need of resources for prenatal medical care information about programs such as WIC, PNP, etc. as needed;

provide all individuals seeking reproductive health services with information about pregnancy planning, preconception health, the consequences of unintended pregnancies, and referrals to comprehensive family planning services; and shall ensure that all children ages birth through two years who may be eligible for early intervention services are referred to Early Intervention Colorado.

8. Contractor shall notify the State within thirty (30) days of a change of the NHVP Nurse Supervisor or fiscal staff and shall require any new NHVP Nurse Supervisor and fiscal staff working on NHVP services to participate in Fiscal Orientation within forty-five (45) days of employment.

9. In order to fulfill model requirements as an implementation site for the Nurse-Family Partnership home visiting program, Contractor shall comply with all elements of the Nurse Home Visitor Program Application Review Summary which is submitted to and monitored by the University of Colorado.

III. Monitoring:

The monitoring of this contract for compliance with fiscal performance requirements is based in part on a fiscal risk assessment conducted prior to contracting, contractor fiscal and programmatic performance during the contract period and contractor compliance with contractual terms and conditions during the contract period. Monitoring will be conducted by the *Program Manager (State Representative)* and methods used will include review of documentation reflective of performance, including reimbursement requests and other documentation as applicable. The contractor's performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

IV. Resolution of Non-Compliance:

The Contractor will be notified in writing within **30** calendar days of discovery of a compliance issue. Within **45** calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the *Program Manager* (State Representative) and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the Remedies section of the General Provisions of this contract.

V. Performance Measures and Monitoring

1. Fiscal performance monitoring by the State for this contract includes without limitation using the following criteria:

- Contractor maintains a caseload commensurate with funding allocation throughout the contract period.
- Contractor's cost reimbursement requests will be accurate and submitted on time (within 60 days of the last day of the month for which you are requesting reimbursement) and will be accurate (line items in the reimbursement request will align with line items in your approved budget).

COLORADO
Office of Early Childhood

Colorado Department of Human Services
Office of Early Childhood
BUDGET WITH JUSTIFICATION FORM

Contractor Name	Montrose County Department of Health & Human Services
Budget Period	July 1, 2019 - June 30, 2020
Project Name	Nurse Home Visitor Program
Counites Served	Montrose, Delta, Ouray, San Miguel, Gunnison

Program Contact Name, Title Phone Email	Theresa Balet, FNP, NFP Supervisor 970 252 5015 tbalet@montrosecounty.net
Fiscal Contact Name, Title Phone Email	Kevin Miller, County Finance 970 252 5062 kmiller@montrosecounty.net
Funded Caseload	80

Expenditure Categories

Personnel Services - Salaried Employees

Position Title/ Employee Name	Description of Work (fringe for all employees includes workers' comp, FICA, Medicare, Unemployment, LTD, retirement & Health Benefits)*	Gross or Annual Salary	Fringe	Percent of Time on Project	Total Amount For Project	FY 2019-2020 A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
Theresa Balet, NFP Program Supervisor and Manager (salary)	Supervisors & manages all operations for the program site. Carries a small caseload.	$73,842	$11,614	90%	$76,910	$0	$0	$76,910
Kimberly Cook, RN,-Nurse Home Visitor	NHV who conducts home visits & coordinates schedules.	$64,992	$19,940	100%	$84,932	$0	$0	$84,932
Sheila Olson, RN-Nurse Home Visitor	NHV who conducts home visits & coordinates schedules.	$69,934	$20,967	100%	$90,901	$0	$0	$90,901
Valerie Stone, RN-Nurse Home Visitor	NHV who conducts home visits & coordinates schedules.	$44,928	$14,719	100%	$59,647	$0	$0	$59,647
Veronica Martiniez-Erie, Admin Assistant and interpreter	Responsible for data entry, MC billing, program support and interpreter for our Sanish speaking clients.	$38,815	$15,305	70%	$37,884	$0	$0	$37,884
Vivian Sisneros, billing	Assists with billing at the county level.	$41,854	$14,719	5%	$2,829	$0	$0	$2,829
				1. Total Personnel Services (including fringe benefits)	**$353,103**	**$0**	**$0**	**$353,103**

Supplies & Operating Expenses

Item	Description of Item	FY 2019-2020 A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
Office Operating Expenses (i.e. supplies)	Used to purchase materials for program, such as pens, paper, folders, binders and additional offise supplies	$0	$0	$2,700
Client Support Materials	Includes gifts for clients and children to promote emotional & social development, safety & positive relationships	$0	$0	$5,400
Printing & Publications	Printing of necessary forms and materials for the program	$0	$0	$2,200
Postal & Shipping Services	Covers cost for mailing and shipping of documents to clients or partnering sites and programs	$0	$0	$200
Communications (cellular, network services)	Covers costs for phone services, long distance, cell serices and data plans for tablets	$0	$0	$2,200
Required Model Materials	Covers costs of forms and required materials used during home visits and data collection	$0	$0	$1,400
Computers or laptops w/software	Covers costs to update software as needed	$0	$0	$500
Rent, maintenance, utilities (not included in indirect)	Covers costs for NFP offices in the HHS building	$0	$0	$15,165
	2. Total Supplies & Operating Expenses	**$0**	**$0**	**$29,765**

Training and Technical Assistance						FY 2019-2020		
Item	Description of Item	Per	Fee	#	Total	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
Program Support Fee	Required cost for NFP	Supervisor	$8,580	1	$8,580	$0	$0	$8,580
DANCE Education	Cost covers required NFP training	NHV	$625	1	$625	$0	$0	$625
DANCE Licensing	Cost covers required NFP training materials	NHV	$60	4	$240	$0	$0	$240
Nurse Consultation, 1st Supervisor	Required cost for NFP	Supervisor	$3,796	1	$3,796	$0	$0	$3,796
Administrator Education	NFP training for Administrator	Administrator	$585	1	$585	$0	$0	$585
Professional Development	Covers cost of additional training for NHVs	NHV/Supervisor	$600	5	$3,000	$0	$0	$3,000
				3. Total Training and Technical Assistance	$16,826	$0	$0	$16,826

Equipment (Over $5,000 Per Item)		FY 2019-2020		
Name	Description of Item	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
	No costs in this category will be reimbursed by CDHS.	$0	$0	$0
	4. Total Equipment	$0	$0	$0

Travel		FY 2019-2020		
Item	Description of Item	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
State Supervisor Meetings	Covers cost of travel, per diem and hotels for Supervisor to attend 3 State Supervisor meetings in Denver each year.	$0	$0	$3,000
NFP Training and Travel	Covers costs of travel to meetings and classes, as well as hotel and per diem for meals when overnight is required.	$0	$0	$3,500
County Vehicle Charges	County vehicles are used for all travel, including home visits, These charges covers fleet charges and replacement accural as well as motor pool expenses and mileage reimbursement when personal cars are used.	$0	$0	$16,000
Public Health in the Rockies Conference	Cost for one nurse to attend Public Health in the Rockies Conference	$0	$0	$1,000
	5. Total Travel	$0	$0	$23,500

Contractors/Consultants (payments to third parties or entities)		FY 2019-2020		
Name	Description of Item	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
Gunnison County NFP Contract	This cost covers program costs for NHV in Gunnison @ 0.75 FTE and includes. salary and benefits.	$0	$0	$65,411
Supplies & Operating Expenses	Covers costs for Gunnison County contractor office supplies, postage, photocopy, printing & publications, cell phone, translator, etc.	$0	$0	$3,300
Travel & Transportation	Covers costs for Gunnison County countractor transportation, motor pool expenses & travel to meetings, professional development, hotel and per diem	$0	$0	$6,300
IT	Covers IT support for Gunnison NHV			$1,894
Outside Services	Covers costs for consultation with Mental health providers when dealing with challenging clients	$0	$0	$500
	6. Total Contractors/Consultants	$0	$0	$77,405
	MODIFIED TOTAL DIRECT COSTS (MTDC)	$0	$0	$500,599

Indirect Costs [not to exceed 10% unless Negotiated Federal Indirect Cost rate or Negotiated State Indirect Cost rate is attached]		FY 2019-2020		
Item	Description of Item	A. Other Sources of Funding	B. Medicaid Revenue	C. CDHS Funding (NHVP)
State Federal Indirect cost rate	25% cap of modified total direct costs (Negotiated rate with CDPHE is 60%)	$0	$0	$125,150
	Total Indirect	$0	$0	$125,150
	TOTAL	$0	$0	$625,749

ADDITIONAL PROVISIONS

1. SERVICE PROVISIONS

The Contractor shall provide the services according to the plans submitted in the "Statement of Work", attached and incorporated herein by this reference as **EXHIBIT A**. In all cases, the descriptions, plans, timetables, tasks, duties, and responsibilities of the Contractor as described in the Statement of Work, shall be adhered to in the performance of the requirements of this contract. In the event of a conflict, the terms and conditions of this contract shall control over the Statement of Work. Any significant changes to the Statement of Work (SOW) require an amendment to the contract.

2. GOALS AND OBJECTIVES

The Contractor shall be responsible for the achievement of any goals and objectives as specified within the Statement of Work (**EXHIBIT A**) of this contract unless written notice of any modifications are furnished by the State to the Contractor allowing adequate time for compliance during the term of this contract.

3. COPY OF SUBCONTRACT

The Contractor shall provide to the State a copy of any executed subcontract between the Contractor and any provider of services to fulfill any requirements of this contract. Subcontracts shall be emailed to the Contract Representative upon execution.

4. PAYMENT

In consideration of the provision of services and reporting and subject to all payment and price provisions and further subject to verification by the State of full and satisfactory compliance with the terms of this contract, the State shall pay to the Contractor an amount not to exceed the amount specified in the Budget (**EXHIBIT B**), of this contract.

A. The Contractor shall submit requests for payment to CDHS_OEC_Invoicing@state.co.us no less than monthly on forms prescribed and provided by the State.

B. Payment shall be made on a cost reimbursement basis for services rendered.

C. Timely Invoicing - Invoices shall be submitted no later than 45 days following the last day of the month. End of State Fiscal Year invoices are on a compressed timeframe. Invoices for all services provided prior to June 30th shall be invoiced by July 5th. Contractors who are unable to provide the invoice by July 5th shall notify the state of the amount to be booked as accounts payable by July 13th by sending an email to CDHS_OEC_Invoicing@state.co.us. Final invoices for services prior to June 30th shall be submitted by September 14th. Invoices received after September 14th may not be paid.

D. The Contractor shall maintain source documentation to support all payment requested pursuant to this contract. All source documentation shall be provided to the State by the Contractor upon request.

E. It is understood that the State reserves the right to offset funds pursuant to this contract based on the discovery of overpayment or improper use of funds by the Contractor. Overpayment or improper use of funds is interpreted to apply to specific terms of prior year contracts, and includes without limitation requirements of the Generally Accepted Accounting Principles (GAAP) issued by the American Institute of Certified Public Accountants, and applicable sections of the Colorado Revised Statutes.

5. PARTICIPATION

The Contractor representative(s) is required to participate in any Office of Early Childhood sponsored meetings related to this contract.

6. SUPPLANTING

Payments made to the Contractor under this contract will supplement and not supplant other state, local or federal expenditures for services associated with this contract.

7. BUDGET CHANGES

Contractor may request in writing adjustments to the direct costs in the current year budget **(EXHIBIT B)** not to exceed 10% of the total budget. Requests shall be made in the form of a written budget revision request to the appropriate program staff. Written approval for the budget revision shall be required prior to any changes to the budget related to the budget revision request. The total dollar amount of the contract budget cannot be changed as a result of the budget revision request. Budget adjustment requests over 10% and/or changes to the total dollar amount of the budget require a formal amendment. No adjustments to the Indirect Costs portion of the budget are allowable without a formal amendment.

Contractor may request in writing up to a 5% increase or decrease to the "Gross or Annual Salary" of an individual employee if a position currently listed in the contract becomes vacant and the new incoming employee will be hired at a higher or lower salary. No increase or decrease within the salary range is authorized without prior written approval from CDHS. Adding additional staff requires an amendment to the contract. Vacancy savings cannot be used to change salary amounts for existing personnel without an amendment. Any change to personnel requires prior written approval from CDHS staff. This process will never change the Contract Maximum Amount. Contractor must use available unused funds from either vacancy savings or another category within the contract. The revision request may not at any time compromise the integrity of the funded program as determined by CDHS program staff.

8. TRAVEL

A. Mileage shall not exceed the Federal mileage rate per https://www.gsa.gov/travel-resources or State mileage rate per https://www.colorado.gov/pacific/osc/travel-fiscal-rule.

B. Per Diem shall not exceed Federal GSA per diem rates for the area of travel per https://www.gsa.gov/travel-resources or State per diem rate for the area of travel per https://www.colorado.gov/pacific/osc/travel-fiscal-rule.

C. Hotel rates cannot exceed any rate established for conference attendance.

D. Usage of airfare or Out of State Travel requires pre-approval from CDHS.

9. MANDATED REPORTING

A. All program staff are required by law to report suspected child abuse and neglect. Mandatory reporters must report suspected child abuse and neglect to the local county child welfare agency, the local law enforcement agency, or by calling the child abuse reporting hotline system at 1-844-CO-4KIDS (1-844-264-5437).

B. All program staff are required to take the online mandatory reporter training on the CDHS Child Welfare Training System: https://www.coloradocwts.com/mandated-reporter-training.

12. GENERAL ACCOUNTING ENCUMBRANCE (GAE)

A. Payment for Nurse Home Visitor Program (NHVP) to all contractors will be made as incurred, in whole or in part, from the total available funds not to exceed $50,000 (FY20), to be utilized for NHVP as follows:

i. Nurse Family Partnership (NFP) training costs, often sites experience staff turnover in a fiscal year and they will be permitted to use the GAE to cover costs of NFP required training that was not included in their FY 19-20 budget.

ii. Travel costs associated with NFP training. For example, if a site hires a new Nurse Home Visitor, and this staff member is required to attend NFP orientation, the site will be able to bill the GAE for the training registration and travel expenses for the training. Travel costs may include mileage, hotel accommodations and per diem for the staff member attending the training.

iii. Operational items not included in their FY19-20 budget such as cell phones, tablets, laptops. Due to staff turnover, sites are to not include potential operational item expenses in their FY 19-20 budgets, but rather utilize the GAE in order to purchase necessary items for new staff.

It is understood each contractor shall obtain prior written approval from CDHS prior to incurring any costs related to NHVP GAE funds. It is further understood and agreed that the maximum amount of funds available state wide for the current fiscal year will be divided between all of the NHVP contracts. The State shall not be liable for any costs incurred without obtaining prior approval for the expenditure of NHVP GAE funds. The NHVP program manager will approve GAE expenditures on a case-by case basis and the state intermediary must concur that they believe the expenditure to be necessary to improving the program. NHVP program manager must approve the expenditure in writing.

B. Payment to Contractor is made from available funds encumbered and shared across multiple contractors. The State may increase or decrease the total funds encumbered at its sole discretion and without formal notice to Contractor. No minimum payment is guaranteed to Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.

C. Invoices shall be submitted separately for pre-approved expenditures.

i. The Contractor shall submit requests for payment to CDHS_OEC_Invoicing@state.co.us.

EXHIBIT D - HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("Agreement") between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as "Covered Entity" and the Contractor is referred to as "Business Associate". Unless the context clearly requires a distinction between the Contract and this Agreement, all references to "Contract" shall include this Agreement.

1. PURPOSE

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information ("PHI"). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") enacted under the American Recovery and Reinvestment Act of 2009 ("ARRA") Pub. L. No. 111–5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the "HIPAA Rules") and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and all other applicable laws and regulations, all as may be amended.

2. DEFINITIONS

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

a. Business Associate. "Business Associate" shall have the same meaning as the term "business associate" at 45 C.F.R. 160.103, and shall refer to Contractor.

b. Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103, and shall refer to the State.

c. Information Technology and Information Security. "Information Technology" and "Information Security" shall have the same meanings as the terms "information technology" and "information security", respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Permitted Uses and Disclosures.

i. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.

i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.

ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:

A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;

B. the person notifies Business Associate of any Breach involving PHI of which it is aware.

iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.

b. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).

c. Impermissible Uses and Disclosures.

i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.

ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.

d. Business Associate's Subcontractors.

i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.

ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.

iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.

e. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such

system including, but not limited to, any policies promulgated by the Office of Information Technology and available at http://oit.state.co.us/about/policies.

f. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.

g. Amendment of PHI.

   i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

   ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.

h. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.

i. Restrictions and Confidential Communications.

   i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:

      A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or

      B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.

   ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.

   iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.

j. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.

k. Audit, Inspection and Enforcement.

   i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.

ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

l. Appropriate Safeguards.

i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.

ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.

iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.

iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

m. Safeguard During Transmission.

i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.

ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

n. Reporting of Improper Use or Disclosure and Notification of Breach.

i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.

ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.

iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.

iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.

o. Business Associate's Insurance and Notification Costs.

i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:

A. loss of PHI data;

B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and

C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.

ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).

iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.

iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

p. Subcontractors and Breaches.

i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.

ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.

q. Data Ownership.

i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.

r. Retention of PHI. Except upon termination of this Agreement as provided in Section 5 below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h above, for a period of six years.

4. OBLIGATIONS OF COVERED ENTITY

a. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.

b. Notice of Changes.

i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.

ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. TERMINATION

a. Breach.

i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.

ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

b. Effect of Termination.

i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.

ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of

Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. INJUNCTIVE RELIEF

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

7. LIMITATION OF LIABILITY

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

8. DISCLAIMER

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

9. CERTIFICATION

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

10. AMENDMENT

a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.

i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.

ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain

written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.

iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.

iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:

A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or

B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.

b. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

12. INTERPRETATION AND ORDER OF PRECEDENCE

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

13. SURVIVAL

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.

APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

This Appendix ("Appendix") to the HIPAA Business Associate Agreement ("Agreement") is s an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to "Contract" or "Agreement" shall include this Appendix.

1. PURPOSE

This Appendix sets forth additional terms to the Agreement. Any sub-section of this Appendix marked as "Reserved" shall be construed as setting forth no additional terms.

2. ADDITIONAL TERMS

a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:

   i. Reserved.

b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:

   i. Reserved.

c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:

   i. Reserved.

d. Definition of Receipt of PHI. Business Associate's receipt of PHI under this Contract shall be deemed to occur, and Business Associate's obligations under the Agreement shall commence, as follows:

   i. Reserved.

e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate's use and disclosure of PHI under the Contract:

   i. Reserved.

f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:

   i. Reserved.

Critical Incident Reporting

Within 48 hours of the occurrence of a critical incident involving any child or client and/or an on duty agency staff member of any family support program staff funded through the Office of Early Childhood (OEC), the agency must report known details of the critical incident to the OEC Program Manager for the involved family support program. The OEC acknowledges that frequently information unfolds over time and may require clarification as more details are identified. Critical incidents may include, but are not limited to: awareness of an egregious incident or suspected incident of abuse and/or neglect, near fatality, or fatality of any child currently enrolled in a family support program; involuntary termination of a program staff's employment; criminal allegations involving program staff and related to his/her employment; potential negative media attention about the family support program; any major injury or threat to the security of an agency staff member while on duty and visiting an enrolled child or family.

It is required to report any critical incident ***within 48 hours*** of the occurrence with specific and accurate details pertaining to the incident. Failure to report a critical incident to the Office of Early Childhood Home Visiting Unit may result in breach of contract.

Examples of situations which may qualify as a critical incident are detailed below. This list is not exhaustive and additional situations may also qualify. *If you are unsure if an instance requires reporting, contact the CDHS Home Visiting Director and/or CDHS Program Manager as soon as possible for guidance.*

- Falsification of client records
- Suspected financial fraud (including a pattern of mistakes calculating mileage reimbursement)
- Intoxication of an on-duty Home Visiting staff member
- Home Visiting staff member deemed not fit for duty
- Termination of employee
- Near death of a child or death of a child
- Severe injury to a child, severe illness of a child which may result in fatality
- Subpoenas for HV staff to attend court in relation to client situation, or request for HV staff to provide depositions or taped testimony in client case related to cases of abuse or neglect

Reporting requirements

Contracted agency is required to notify the Home Visiting Unit Director and/or the Home Visiting Program Manager within 48 hours' notice of critical incident via phone call or written documentation via e-mail. Agency is required to submit written documentation of the incident or to provide the information requested via phone.

Critical incident information sharing policy

1. Home Visiting Program Director and/or Program Manager is notified of critical incident within 48 hours.
2. If Home Visiting Program Director and / or Program Manager is notified of critical incident by phone, they document communication regarding the critical incident in writing.

3. Home Visiting Program Director and / or Program Manager will ask site what supports they need based on the incident. For example: sites may request additional funding if needing mental health support for a Home Visitor and/or Supervisor upon a notification of a child fatality.
3. Any notification of the critical incident shared by e-mail will be encrypted per contracted agency's requirements.
4. Home Visiting Program Director and/or Program Manager notify Office of Early Childhood Division of Community and Family Support Division Director, Office of Early Childhood Director, and Communications and Project Manager, within 48 hours of report from site.
4. If incident has a possibility of having Child Welfare implications, Home Visiting Program Director and / or Program Manager shall share report with the Child Maltreatment Prevention Unit Director and the Child Protection Services Manager to ensure all appropriate steps have been completed for Child Welfare reporting.
5. In instances where financial fraud or infraction to contractual provisions are suspected, information shall be shared with the OEC CFO and Contracts Manager.

Site implications

- Termination of HV staff will be recommended by the OEC if a critical incident includes the following:

- Falsification of client records
- Falsification of documentation
- Financial fraud of any kind